PERBADANAN LABUAN

v.

SABAH URBAN DEVELOPMENT CORPORATION SDN BHD

HIGH COURT SABAH & SARAWAK, LABUAN
DAVID WONG DAK WAH J
[NO: L-11-01-2008]
17 JULY 2009

CIVIL PROCEDURE: *Jurisdiction - Magistrates' Court - Claim for annual rates, arrears and interest - Whether Magistrates' Court has jurisdiction to adjudicate a claim exceeding monetary limit of RM25,000 - Interests of justice - Local Government Ordinance 1961, ss. 2, 82, 91 - Subordinate Courts Act 1948, ss. 82, 90*

LOCAL GOVERNMENT: *Rates - Arrears - Claim filed in Magistrates' Court - Whether Magistrates' Court has jurisdiction to adjudicate a claim exceeding monetary limit of RM25,000 - Interests of justice - Local Government Ordinance 1961, ss. 2, 82, 91 - Subordinate Courts Act 1948, ss. 82, 90*

The plaintiff filed a claim of RM108,523.02 together with interests and costs for the annual rates, arrears and interest pursuant to s. 82 of the Local Government Ordinance 1961 ('LGO') in the Magistrates' Court. This claim was struck out, resulting in the plaintiff's present appeal in which two issues were raised: (i) whether the Magistrates' Court had the jurisdiction to adjudicate a claim which exceeded the monetary limit of RM25,000 prescribed by the Subordinate Courts Act 1948 ('SCA'); and (ii) whether the defendant was the owner of the property as defined by s. 2 of the LGO.

Held (allowing the appeal):

(1) Section 90 of the SCA starts off with the phrase "Subject to the limitations contained in this Act, …", which implies that the monetary limit is subject to other limitations in the SCA. In other words, s. 90 of the SCA must be read with the other provisions of the SCA. In the context of this case, s. 90 of the SCA was subject to the words "or any other

written law" set out in s. 82 of the SCA. Section 91 of the LGO, containing the words "irrespective of the amount thereof", is the other written law. (para 6)

(2) Issue (ii) involved the determination of facts and the application of those facts to the definition of the word "owner" as defined in s. 2 of the LGO; thus, in the interests of justice, this issue ought to be reverted to the Magistrates' Court to adjudicate. (paras 7 & 8)

(3) For the reasons set out above, the Magistrates' Court has the jurisdiction to hear this claim. (para 9)

Legislation referred to:
Local Government Ordinance 1961, ss. 2, 82, 91
Subordinate Courts Act 1948, ss. 82, 90, 109

For the appellant - Colin Clark; M/s Clark, KS Chin & Co
For the respondent - Arthur Chin; M/s Fernandez & Co

Reported by Suresh Nathan

JUDGMENT

David Wong Dak Wah J:

[1] The plaintiff had in the magistrate court filed a claim of RM108,523.02 together with interests and cost for the annual rates, arrears and interest pursuant to s. 82 of the Local Government Ordinance 1961. The claim was struck out by the magistrate court resulting in this appeal which raises two issues:

1. Whether the magistrate court had the jurisdiction to adjudicate a claim which exceeds the monetary limit of RM25,000 prescribed by the Subordinate Courts Act 1948 (SCA)?

2. Whether the defendant is the owner of the property as defined by s. 2 of the Local Government Ordinance?

Issue 1

Whether The Magistrate Court Had The Jurisdiction To Adjudicate A Claim Which Exceeds The Monetary Limit Of RM25,000 Prescribed By The Subordinate Court Act?

[2] The plaintiff's counsel, Mr Colin Clark's submission is simply this. The suit is taken out in the magistrate court by virtue of s. 91 of the Local Government Ordinance 1961 which states:

> ... Notwithstanding the provisions of section 90 the Authority may at its discretion, after the time fixed for the payment of any such rates or cesses as aforesaid, recover from the person in default (without further notice or demand) the amount of the rates and cess due by such person, irrespective of the amount thereof, by suit in the Court of a Magistrate of the First Class, whether the person liable for the same shall be resident within the jurisdiction of such court or not.

[3] The submission of the counsel for the defendant, Mr Arthur Chin, is also a simple one and that is the claim contravenes s. 90 of the SCA which states as follows:

> Subject to the limitations contained in this Act, a First Class Magistrate shall have jurisdiction to try all actions and suits of a civil nature where the amount in dispute or value of the subject-matter does not exceed twenty five thousand ringgit.

[4] And he further submits that there is a conflict between two just mentioned legislations and in such circumstance s. 90 of the SCA must take precedence over the Local Government Ordinance by virtue of s. 109 of the SCA which states as follows:

> In the event of inconsistency or conflict between this Act and any other written law in force at the commencement of this Act, the provisions of this Act shall prevail.

[5] In rebutting Mr Chin's submission, Mr Clark refers the court to s. 82 of SCA and submits that there is no inconsistency between the SCA and Local Government Ordinance. Section 82 states as follows:

> **82. General powers and jurisdiction of Magistrates' Courts and Magistrates**
>
> A Magistrates' Court constituted under this Act shall, for all purposes, be deemed to be the Court of a First Class Magistrate, and shall have all the powers and jurisdiction conferred on a First

A Class Magistrate by this Act **or any other written law,** and any Magistrate of either class within the local limits of whose jurisdiction the Court is situate may exercise the powers and jurisdiction of the Court: (emphasis added)

B Provided that a Second Class Magistrate shall not hold any preliminary inquiry or proceed to the final trial and determination of any cause or matter which is not within the jurisdiction conferred upon him by section 88 or section 92 or by any other written law.

C **[6]** Mr Clark refers to the phrase 'or any other written law' in s. 82 and submits that s. 91 of the Local Government Ordinance is the 'other written law'. In my opinion there is merit in that submission. In s. 90 SCA, the section starts off with the phrase 'Subject to the limitations contained in this Act, …' which implies D that the monetary limit is subject to other limitations in the SCA. In another words s. 90 SCA must be read with other provisions of SCA. In the context of this case s. 90 SCA is subject to the words 'or any other written law' set out in s. 82 SCA. Further one must presume that when the SCA was drafted the drafters E and Parliament were aware of the existence of the Local Government Ordinance. In fact one can also say that when s. 91 Local Government Ordinance was drafted the draftsperson and State Assembly also knew the monetary limits jurisdiction of magistrate court as in s. 91 the words 'irrespective of the amount F thereof' appear. I can see the reason for it as a claim for the annual rates, arrears and interest pursuant to s. 82 of the Local Government Ordinance 1961 cannot be any stretch of imagination a complicated claim or involve any complicated legal issue.

G **Issue 2**

Whether The Defendant Is The Owner Of The Property As Defined By S. 2 Of The Local Government Ordinance?

H **[7]** On this, Mr Clark submits that this issue involves some determination of facts and applying those facts to the definition of the word 'owner' defined in s. 2 of the Local Government Ordinance which states as follows:

I … "owner" means owner as defined in section 4 of the Land Ordinance and any person occupying land by virtue of any licence granted under the provisions of any written law relating to land tenure.

[8] Hence he submits that it is in the interests of justice that this issue is reverted back to magistrate court to adjudicate. Again I find merit in the submission.

Decision

[9] For reasons set out above, I find that the magistrate court has the jurisdiction to hear this claim. Accordingly I allow the appeal with no order as to costs and order this matter be reverted back to the magistrate court to adjudicate on whether the defendant is the owner as defined in s. 2 Local Government Ordinance.

[10] Order accordingly.